

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING OFFICE**

Calvin A. Moffie, N.H.A.  
Lic. No. 000738

Petition No. 990208-036-001

**MEMORANDUM OF DECISION**

*Procedural Background*

On June 14, 2000, the Department of Public Health ("the Department") issued a Statement of Charges ("the Charges") against Calvin A. Moffie ("respondent"), a licensed Nursing Home Administrator, alleging that respondent violated §19a-517 of the Connecticut General Statutes ("the Statutes") as set forth more fully below. H.O. Exh. 1.

On July 31, 2000, the Department issued a Notice of Hearing in which the Commissioner of the Department appointed a Hearing Officer to hear this matter and to recommend findings of fact and conclusions of law. H.O. Exh. 2.

On September 18, 2000, respondent filed an Answer to the Charges, admitting some of the allegations, denying others, and raising various defenses. H.O. Exh. 6.

A public hearing was held on October 4, 2000, at which Attorney Mark S. Shipman represented respondent and Attorney David Tilles represented the Department. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). The parties did not offer any testimonial evidence during the hearing but, instead, submitted a joint Stipulation of Facts addressing the evidentiary issues presented by this case. On October 27, 2000, the parties submitted written briefs; on January 8, 2001, the parties submitted Supplemental Stipulations;<sup>1</sup> on January 21, 2001 and February 21, 2001, respondent and the Department, respectively, filed written reply briefs; and, on April 19, 2001 oral argument was held.

On August 20, 2001, a Proposed Memorandum of Decision was issued. On September 4, 2001, respondent requested an opportunity to file briefs, exceptions, and

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<sup>1</sup> In a letter dated December 21, 2000, the hearing officer directed the parties to clarify certain issues pertaining to their Stipulation. The parties responded to that request by submitting a Supplemental Stipulation on January 8, 2001. The December 21, 2000 letter and the Supplemental Stipulation were entered into the record as Hearing Officer's Exhibits 10 and 11, respectively.

present oral argument. Respondent did not file briefs or exceptions. The Department filed a letter dated August 27, 2001, requesting that a typographical correction be made to the Proposed Decision. On September 11, 2001, the undersigned was designated to issue a final Memorandum of Decision in this matter after reviewing the record and hearing oral arguments. Respondent and the Department presented oral argument on December 20, 2001. Respondent was not represented by an attorney; attorney David Tilles represented the Department.

This Memorandum of Decision is based entirely on the record and sets forth findings of fact, conclusions of law, and an order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Int., Inc. v. S & H Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

### ***Allegations***

1. In paragraph 1 of the Charges, the Department alleges that respondent, of Wallingford, Connecticut, is, and has been at all times referenced in the Charges, the holder of Connecticut Nursing Home Administrator license number 000738.
2. In paragraph 2 of the Charges, the Department alleges that from June 24, 1990 through the end of 1992, respondent was the president and sole shareholder of C. A. Moffie, Inc., which had a contract during the same time period to provide management services to Alzheimer's Resource Center of Connecticut ("ARCC"), a nursing facility licensed by the State of Connecticut.<sup>2</sup>
3. In paragraph 4 of the Charges, the Department alleges that from June 24, 1990 through the end of 1992, respondent was also the Administrator of Care Communities, Inc., d/b/a Willows of Woodbridge ("the Willows"), a nursing facility licensed by the State of Connecticut.
4. In paragraph 5 of the Charges, the Department alleges that in the aforementioned period of time, ARCC and the Willows received reimbursement from the Connecticut Department of Social Services ("DSS"), then known as the Connecticut Department of Income Maintenance, under the Medicaid program, or were subject to the rate-setting authority of DSS for self-pay patients. Among the items reimbursed by the Medicaid program, or considered as a rate-setting factor, were salaries and fees for management.<sup>3</sup>

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<sup>2</sup> At the hearing, the Department moved to withdraw paragraph 3 of the Charges, which motion was granted. Tr. p. 4.

<sup>3</sup> At the hearing, the Department moved to withdraw the allegation in paragraph 5 of the Charges relating to The Suffield House, which motion was granted. Tr. p. 5.

5. In paragraph 6 of the Charges, the Department alleges that respondent submitted various documents to DSS to obtain reimbursement or rate-setting for the Willows, including an Annual Report of Long Term Care Facility. The Annual Report for the year ending September 30, 1990 was submitted on December 31, 1990; the Annual Report for the year ending September 30, 1991 was submitted on April 13, 1992; and, the Annual Report for the year ending September 30, 1992, was submitted on December 31, 1992. The Annual Reports state that respondent worked as the Administrator of the Willows as follows: 552 hours during the period of June 24, 1990 to September 30, 1990; and, 2080 hours for each of the two succeeding years. Respondent drew a substantial salary for these positions that was claimed as a reimbursable cost.
6. In paragraph 7 of the Charges, the Department alleges that on March 6, 1998, respondent executed an affidavit that he submitted to DSS in support of his claim for reimbursement for certain costs attributable to his activities on behalf of ARCC. The affidavit avers, in part, "[D]uring the foregoing period, I occasionally performed other administrative duties at other CHF managed facilities, but worked extensively and primarily on the ARCC project, including numerous meetings during the evenings and on weekends. I judge at least 85% of my time was spent on the ARCC project during the foregoing periods."<sup>4</sup>
7. In paragraph 9 of the Charges, the Department alleges that one or more of respondent's various assertions of reimbursable activities in the aforementioned annual cost reports are false, in that respondent cannot have devoted at least 85% of his professional efforts to ARCC at the same time that he was employed full time as the administrator for the Willows. Respondent's claims are, therefore, material deceptions and illegal, incompetent, or negligent conduct in the practice of his profession.<sup>5</sup>

### *Findings of Fact*

1. Respondent resides in Wallingford, Connecticut. Respondent is a licensed Nursing Home Administrator holding Connecticut Nursing Home Administrator license number 000738, and held such license at all times referenced in the Charges. H.O. Exh. 6 (Answer).
2. During the period of 1989 through approximately May 1, 1998, respondent provided management services to ARCC, acting either individually or in his capacity as an officer of Calvin A. Moffie, Inc. From October 23, 1992 through all other times relevant to the Charges, ARCC was licensed by the Department as

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<sup>4</sup> At the hearing, the Department moved to withdraw paragraph 8 of the Charges, which motion was granted. Tr. p. 4.

<sup>5</sup> At the hearing, the Department moved to withdraw the allegation in paragraph 9 of the Charges relating to The Suffield House, which motion was granted. Tr. p. 5.

a chronic and convalescent nursing home.<sup>6</sup> H.O. Exh. 7 (Stipulation of the Parties).

3. During the period June 24, 1990 through the end of 1992, respondent was the Administrator of the Willows. At all times relevant to the Charges, the Willows was licensed by the Department as a chronic and convalescent nursing home. H.O. Exhs. 6, 7.
4. During the period June 24, 1990 through the end of 1992, ARCC and the Willows received reimbursement from the Connecticut Department of Income Maintenance, now the Connecticut Department of Social Services ("DSS"), under the Medicaid program and were subject to DSS's rate-setting authority. Among the items considered for reimbursement or rate-setting by DSS were management salaries and fees. H.O. Exhs. 6, 7.
5. Respondent submitted various documents to DSS to obtain reimbursement or rate-setting for the Willows, including Annual Reports for the fiscal years ending September 30, 1990 and September 30, 1991. Those Annual Reports state that respondent worked as an Administrator for 552 hours in fiscal year ("FY") 1990 and 2080 hours in FY 1991. The Willows paid respondent a salary of \$12,239 and \$45,000 for FY 1990 and 1991, respectively, that was claimed as a reimbursable cost. H.O. Exhs. 7, 11.
6. On March 6, 1998, respondent executed an affidavit that he submitted to DSS in order to claim reimbursement on behalf of ARCC for certain costs attributable to his activities during the period of "late 1989" to August 6, 1991. The affidavit avers, in part, "[D]uring the foregoing period [*i.e.* late 1989 to August 6, 1991], I occasionally performed other administrative duties at other CHF managed facilities, but worked extensively and primarily on the ARCC project, including numerous meetings during the evenings and on weekends. I judge at least 85% of my time was spent on the ARCC project during the foregoing periods." H.O. Exh. 7.
7. On May 19, 1998, respondent entered into a Settlement Agreement ("the Settlement Agreement") with DSS to resolve a dispute with that agency regarding the various requests for reimbursement of his Administrator's salary submitted by ARCC and the Willows. The Settlement Agreement, among other conditions, excluded respondent from owning, or being employed by, any facility that seeks reimbursement for items or services from the Medicaid program for a period of four years. H.O. Exh. 7.
8. The Settlement Agreement does not address respondent's Nursing Home Administrator's license, although the issue of his license was discussed by the parties during the negotiations that led to the signing of the Settlement

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<sup>6</sup> Pursuant to §4-178(c) of the Statutes, the hearing officer took administrative notice of the Department's records pertaining to the licensing of ARCC and the Willows.

Agreement. DSS has no statutory or other authority to take disciplinary action against respondent's Nursing Home Administrator license. H.O. Exh. 7.

### ***Discussion and Conclusions of Law***

The Department alleges in the Charges that respondent's license is subject to disciplinary action pursuant to §19a-517(b) of the Statutes. Section 19a-517(b) of the Statutes provides, in relevant part, that "[t]he department may take action under section 19a-17 for any of the following reasons: (1) The license holder has . . . engaged in . . . material deception in the course of professional services or activities; . . . [or] (3) illegal, incompetent or negligent conduct in his practice . . . ."

Respondent admits most of the essential factual allegations of the Charges, but raises two defenses. First, he claims that the representations he made in the reports and the affidavit he filed with DSS did not constitute "material deception in the course of professional services or activities" or "illegal, incompetent or negligent conduct in his practice" in violation of *Conn. Gen. Stat* §19a- 517(b). Second, he claims that the Stipulated Agreement he entered with DSS precludes the Department from taking any action against his license.

As set forth below, the Department met its burden of proof in establishing, by a preponderance of the evidence, that respondent engaged in material deception in the course of performing professional services or activities, and engaged in incompetent conduct in his practice as a Nursing Home Administrator, both of which constitute violations of §19a-517(b) of the Statutes. Moreover, the Settlement Agreement does not preclude the Department from taking disciplinary action against his license.

#### ***1. Conflict in hours***

The periods at issue during which respondent claimed reimbursement for his positions with both the Willows and ARRC are as follows: (1) June 24, 1990 through September 30, 1990; and (2) October 1, 1990 through August 6, 1991. FF 2, 3, 5, 6. The Willow's FY 1990 Annual Report for the year ending September 30, 1990, states that respondent worked 552 hours as an Administrator for the Willows during the period from June 24, 1990 to September 30, 1990. The Willow's FY 1991 Annual Report for the year ending September 30, 1991, states that respondent worked 2,080 hours as an Administrator for the Willows during the period from October 1, 1990 to September 30,

1991. FF. 5. The record further establishes that respondent certified the accuracy of both Annual Reports. H.O. Exh. 7.

In a sworn affidavit submitted to DSS, respondent also claimed that he spent at least 85% of his time working for ARCC from late 1989 through at least August 6, 1991. FF. 6. If respondent's statement about his work hours at ARCC is true, and assuming that he worked only at the Willows and ARCC during this period of time, he is essentially claiming that the 552 hours and 2,080 hours he worked at the Willows in FY 1990 and 1991, respectively, constituted only 15% of his working hours during this period. Therefore, he is claiming that he worked 3,128 hours and 9,831 hours, respectively, on the ARCC project (*i.e.*, 85% of his time) during the same time periods. These numbers break down to a claim that respondent was working approximately 280 hours per week, or *approximately 40 hours per day, seven days a week*. Obviously, there are, literally, not enough hours in the day for respondent to have worked all of the hours he claimed to have worked in his submissions to DSS; and, clearly, the statements regarding respondent's work hours in those submissions are inconsistent and cannot all be true.

## 2. **Material Deception**

Section 19a-517(b)(1) does not define the term "material deception." Black's Law Dictionary defines "deception" as "intentional misleading by falsehood spoken or acted." *Black's Law Dictionary*, Rev. 4<sup>th</sup> Ed. Thus, some form of intentional conduct is required to establish "material deception" in violation of §19a-517(b)(1).

The Proposed Memorandum of Decision found that there was insufficient evidence to establish the requisite element of intent necessary to find material deception.<sup>7</sup> The hearing officer opined that because there was no evidence establishing, *e.g.*, respondent's involvement in the preparation and submission of the reports and affidavits, there was insufficient evidence of respondent's intent to deceive.

After the Proposed Memorandum of Decision was issued, the Superior Court issued a decision in *Hultman v. Department of Social Services*, 47 Conn. Sup. 228 (2001), finding that the submission of false Cost Reports under oath for Medicaid

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<sup>7</sup> It should be noted that respondent did not testify in the hearing. The evidence consisted exclusively of Stipulations of Facts and Exhibits. Thus, there were no credibility determinations, and this Final Decision also is not based on credibility determinations.

reimbursement, was sufficiently reckless to provide a basis for a fraud claim requiring intent. *Id.* at p. 236, citing, *Kilduff v. Adams, Inc.*, 219 Conn. 314, 329 n.15, 593 A.2d 478 (1991) and *Clark v. Haggard*, 141 Conn. 668, 673, 109 A.2d 358 (1954). In particular, the court found that

[t]he plaintiffs signing of the cost reports without reading them or even understanding them, knowing full well they would be the basis for rates paid to the facility, is substantial evidence that the plaintiffs were recklessly indifferent to the truth in their submission of financial information to the department. Their submission of cost reports containing obviously false reporting, especially under oath, evidences reckless indifference to the truth, which is sufficient proof of fraudulent intent. *Hultman* at 237.

Similarly, in this case, respondent signed an affidavit, under oath, in support of ARCC's cost report, stating that he spent 85% of his time on ARCC-related activities from late 1989 until August 6, 1991 (*see*, App. B, ¶16; H.O. Exh. 7, ¶5). The introductory language states, "I, Calvin A. Moffie, being duly sworn, hereby depose and say as follows." At the conclusion of the statement, it is subscribed and sworn before a Commissioner of the Superior Court. Respondent knew that this affidavit was being submitted to DSS in support of ARCC's Cost Report. In fact, it was submitted to bolster the Cost Report after DSS had disallowed certain claimed costs.

Respondent also signed and submitted Cost Reports for the Willows for fiscal years 1990, 1991 and 1992, under oath, stating that he worked 2,080 hours per year. These Reports specifically state in reference to respondent, that

I hereby certify that I have read the above statement and that I have examined the accompanying Cost Report and supporting schedules prepared by . . . Willows . . . for the cost report period . . . and that to the best of my knowledge and belief, it is a true, correct, and complete statement prepared from the books and records of the provider(s) in accordance with applicable instructions. I hereby certify that I have directed the preparation of the attached Statements of Operational Costs and the related Balance Sheets of this Facility in accordance with the Reporting Requirements of the State of Connecticut for the year ended as specified above. I have read this Report and hereby certify that the information provided is true and correct to the best of my knowledge under the penalty of perjury. I also certify that all salary and non-salary expenses presented in this Report as a basis for securing reimbursement for Title XIX patients were incurred to provide patient care in this Facility.

The following statement appears at the top of each Cost Report in capital letters: “MISREPRESENTATION OR FALSIFICATION OF ANY INFORMATION CONTAINED IN THIS COST REPORT MAY BE PUNISHABLE BY FINE AND/OR IMPRISONMENT UNDER STATE OR FEDERAL LAW.”

A preponderance of the evidence establishes that one or more of these reports were false. Because the court in *Hultman* concluded that intent can be inferred from such reckless indifference to truth, respondent’s false affidavit and/or Cost Reports submitted to DSS are sufficiently reckless to establish the element of intent necessary to the Department’s claim of material deception. As stated by the Court in *Hultman*, the Department does not require proof of intent beyond a reasonable doubt. In this proceeding the standard is a preponderance of the evidence; and, respondent’s false statements submitted to DSS, concerning a significant subject, meet this standard. The Department, therefore, established that respondent violated §19a-517(b)(1), as alleged in the Charges.

**3. *Illegal, incompetent, or negligent conduct***

Respondent, as a Nursing Home Administrator, is required to possess special skill and training in the area of finances, generally, and in the financial management of nursing homes, in particular. See, §19a-512 of the Statutes and §19a-519-2 of the Regulations. The submission of reports and other documents to DSS relating to rate-setting and the reimbursement of nursing home expenses under the Medicaid program is, therefore, clearly within the job responsibilities of a Nursing Home Administrator and a matter over which respondent possesses specialized knowledge and expertise. Respondent admits that he signed all three of the documents submitted to DSS at issue. H.O. Exh. 9. Since all three of these statements were submitted under oath, respondent was swearing to their truth and accuracy. As noted above, these three submissions cannot all be true and accurate. By failing to assure that these submissions were, in fact, truthful and accurate, respondent acted incompetently in the course of his practice as a licensed Nursing Home Administrator in violation of §19a-517(b)(3) as alleged in the Charges.

**4. *Preclusion***

Respondent argues that the Department is precluded from taking action against his license because of the Settlement Agreement he reached with DSS. Respondent



acknowledges, however, that the doctrines of collateral estoppel and *res judicata* do not apply to the current situation. H.O. Exh. 8. Instead, he argues that “fundamental fairness” requires the Department to refrain from taking any disciplinary action against his license. There is nothing unfair, however, about the Department taking disciplinary action against respondent’s license in the current case.

The Department was not a party to the Settlement Agreement and had no role in its drafting or implementation. FF 7. The Settlement Agreement does not even mention respondent’s Nursing Home Administrator license, let alone provide that no action will be taken against that license. Indeed, because the Department has sole jurisdiction over respondent’s Nursing Home Administrator license, DSS had no authority to address that issue in the Settlement Agreement even if it had chosen to do so. FF 8.9. DSS entered into the Settlement Agreement solely in furtherance of its role as the “single state agency responsible for administering the Medicaid program in the State of Connecticut pursuant to *Conn. Gen. Stat. §17b-2*.” H.O. Exh. 7. The Settlement Agreement, therefore, has no impact on the Department’s authority to discipline respondent’s license.

Respondent was represented by counsel during the negotiations that led up the signing of the Settlement Agreement. If he erroneously believed that the issue of his license was addressed in the Settlement Agreement, as he now argues, he has only himself and his attorney to blame. Certainly, the fact that respondent’s license was discussed with DSS during the negotiations which led to the Settlement Agreement does not preclude the Department from taking disciplinary action against that license in the current proceeding. Respondent’s claim of preclusion, therefore, is without merit.

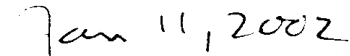
Respondent’s intentional misconduct in submitting false statements to DSS, and the fact that the record is completely devoid of any mitigating evidence, warrant the revocation of respondent’s license. The submission of Cost Reports is an essential responsibility of a Nursing Home Administrator. If respondent cannot be trusted to submit accurate reports, he cannot be entrusted with the authority and responsibilities his license bestows.

***Order***

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to §19a-17(a) of the Connecticut General Statutes, respondent's license as a Nursing Home Administrator is hereby revoked.



Donna Brewer, Esq.  
Hearing Officer



Date